Rule Making, Petition for, Denied
Translator, FM

Petition for Rule Making to expand services of FM b/c translators denied. Commission concluded that to initiate action on proposals is untimely, because of ongoing proceedings.
—*Amendment of Part 74*
Docket 19918

FCC 84-158

## BEFORE THE
## FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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| In the Matter of | |
| Amendment of Part 74, Subpart E of the Commission's Rules Pertaining to FM Radio Broadcast Translator Stations. | Docket 19918<br>RM-2236 |
| Amendment of Subparts F and L of Part 74 to permit use of alternative input sources for FM broadcast translator stations and to permit uniform 10 watt FM translator power. | RM-3914 |

MEMORANDUM OPINION AND ORDER
Proceeding Terminated

Adopted: *April 11, 1984; Released; May 18, 1984*

BY THE COMMISSION: *COMMISSIONER RIVERA CONCURRING IN THE RESULT.*

### *Introduction*

1. By Petition for Rule Making filed May 27, 1981, the Moody Bible Institution of Chicago ("Moody") petitioned for amendment of Subparts F and L of Part 74 of the Commission's rules to expand the services of FM broadcast translators.[1]

2. The amendments requested would permit FM translators to broadcast program material received via microwave and satellite circuits, broadcast programs specifically originated for a national audience via unattended translators, and originate unlimited hours of local and

[1] 47 CFR 74.1201-1284; 47 CFR 74.601-682.

recorded programs. Moody requested that FM translators be authorized in all areas of the country with a uniform 10 watt transmitter power. In addition, Moody requested that licensees of FM translator stations be permitted to use TV auxiliary Microwave channels on a secondary non-interference basis for extending the programming of the primary stations to locations beyond the normal reception range of the primary FM stations and to obtain alternative program sources.

3. Moody notes that the current rules restrict translators to the simultaneous rebroadcasting of FM signals received "off air" from a primary FM station or another FM translator. This limitation, Moody claims, makes it necessary to use large, expensive antennas to receive the primary signal and rebroadcast it to the shielded community. The same signal could be more easily and clearly received via satellite microwave transmission, and the transmitter could be located so as to maximize reception quality to the public. The result, Moody says, would be less expense for the licenaee and better service to the public. Moody argues that this problem could also be minimized by the use of "FM broadcast relay stations." Its petition requests amendment of Subpart F of Part 74 to permit the use of Bands A, B, and D by such relay stations on a secondary non-interference basis to other TV auxiliary stations.

4. Moody emphasizes that FM translator rules originated from existing TV translator rules but that while the Commission has recognized the potential of television translators through the use of a variety of input sources, the same technological developments have not generated similar consideration for FM translators.[2] The Commission has, for example, permitted TV translators to be relicensed as low power TV stations so that, in addition to simultaneous retransmission of off air signals of TV broadcast stations, they may also broadcast unlimited periods of locally originated programs and programs obtained by recordings, satellite, microwave and other sources.[3]

5. Moody argues that requests for waivers to permit construction of satellite-fed FM translators filed by other parties indicate interest in regulatory reform. Moody further contends that new technologies provide the potential for enhanced service and program diversity to the public via translators. Satellite and microwave feeds, if authorized, could offer more dependable transmission and increased translator service areas, so as to maximize the signal reception in targeted areas.

6. Moody also requests that LPFM service be authorized on a parity with low power television with respect to program origination potential. The authority to originate local programming, it claims, would be consistent with the Commission policy that led to expansion of secondary

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[2] *Report and Order* in BC Docket No. 20529, 42 RR 2d 101 (1977).

[3] *Report and Order* 47 FR 21468, 51 RR 2d 476 (1982).

television service. Origination capability would be especially responsive to the needs of smaller communities that lack a population base sufficient to support a full power FM broadcast station. Local programming responsive to community needs and "narrowcasting" aimed at specific population demographics could be supported. The use of additional input feeds in combination with authority to originate programming would provide the greatest potential for diversity of aural services to the listening public.

7. Finally, Moody contends that translators should be allowed to operate with 10 watts transmitter power regardless of their geographic location. The maximum power of a particular translator, within this range, would continue to be limited by the interference protection standards which secondary broadcast services must adhere to or cease operation. Moody argues that the rules should not arbitrarily limit the power of translator stations in certain locations if they can, in fact, operate with higher power and not cause prohibited interference.

8. The Commission published a Notice of Petition for Rule Making requesting comments on Moody's Petition. Ninety-nine comments were received. Fourteen formal comments were filed by broadcasters, networks, industry trade organizations and other communications companies. Informal comments were submitted by 85 individuals across the nation. In response to the initial comments the Commission received four reply comments including two from petitioner, Moody Bible Institute.

### *Regulatory Background*

9. The Commission currently authorizes three types of stations to provide FM broadcast service to the public: full-service stations,[4] translator stations, and booster stations. Full-service stations provide primary service to most of the public while translators and boosters provide "fill-in" service. Specifically, translators and boosters receive the signal of a full-service station and simultaneously rebroadcast it to a community or area otherwise unable to receive the primary station's signal. Translators are secondary stations in that they must not cause interference to reception of full-service broadcast stations.

10. The service area of a translator may extend outside the service area of the primary station and can be licensed to any qualified individual, organized group of individuals, local civil government body, and with certain limitations, broadcast station licensees.[5] Translators are frequency conversion devices that receive an incoming signal on one frequency, amplify it, and "translate" it to another for simultaneous rebroadcast. The existing rules permit them to translate "... the signals of an FM

[4] "Full service stations" as used herein refers to FM broadcast stations licensed under Subpart J of Part 73 of the Commission rules, 47 CFR § 73.201-73.346.

[5] See, 47 CFR § 74.1232.

broadcast station or another FM translator station which have been received directly through space, converted, and suitably amplified."[6] Translators may also broadcast locally-originated material in case of an emergency, or to request or acknowledge contributions. In the latter case, they are limited to a maximum transmission time of 30 seconds each hour.

11. Translators may operate with a maximum transmitter power output ("TPO") of either 1 or 10 watts depending upon their location. Stations located east of the Mississippi River and in Zone I-A are limited to 1 watt.[7] There is no limit on the effective radiated power translators may achieve with directional antennas.

*Review of Comments*

12. As noted earlier, the Commission received nearly 100 comments, formal and informal, in response to Moody's Petition for Rule Making. The formal comments were evenly split on whether FM translators should be allowed to use a variety of input feeds and have expanded origination capacity. In general, those favoring the authorization of additional input sources also favored expanded origination capacity or a new "low power FM" service.

13. American Broadcasting Companies Inc. ("ABC") and the National Association of Broadcasters ("NAB") were generally in favor of expanding translator access to satellite programming and microwave transmissions but were opposed to the institution of a LPFM service authorizing unlimited origination. The NAB and the National Radio Broadcasters Association (NRBA) voiced similar requests for a Commission inquiry into the economic and administrative impact that would result from implementation of Moody's proposal. They asked that the Commission carefully consider the administrative demands that would be generated by the expected filing of thousands of applications. They also asked that such an inquiry consider the potential for serious economic injury to small full service radio stations. Their comments expressed the concern that LPFM stations would divide the market by airing programming from satellites and distant microwave feeds causing local full service stations and their local programming to perish from the air waves. These issues are also addressed in an outstanding *Further Notice of Proposed Rulemaking* in Docket 19918, adopted by the Commission on March 22, 1978, (43 FR 14695).

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[6] 47 CFR § 74.1231.

[7] Zone I-A is the Commission's designation for that part of California below the 40th parallel. Stations located elsewhere may operate with 10 watts.

14. A number of these comments also addressed the need for changes in the current translator ownership restrictions contained in the Rules.[8] M/A COM urged the Commission to avoid imposing any ownership limitations on who may own FM translators. John A. Watkins and Wycom Corporation suggested the Commission delete its existing restrictions. The National Citizens Committee for Broadcasting ("NCCB"), on the other hand, stated that it could support "reasonable ownership limitations." The ownership restrictions were also discussed by those parties opposing the Moody petition. These parties felt that the Commission should consider rule changes so FM licensees could establish translators outside their 1 mV/m contours or assist groups interested in doing so. Thomas W. Read submitted a petition for rule making seeking changes in the FM translator rules so *commercial* FM station licensees could operate translators anywhere within 150 miles of their station.[9]

15. Opposing comments from Cascade Broadcasting Corporation cited the economic impact FM translator stations would have on local full service stations. It maintained that local stations are frequently marginal operations and translator stations could drive them out of business. The NRBA echoed these comments stating that the establishment of a large number of translator stations could deleteriously affect the health of the broadcast industry. On the other hand, the NCCB argued that the "economic injury" issue posed by current broadcasters is without merit where marketplace sensitivity is paramount.

16. Some commenters were concerned about adequate interference standards for protection of full service stations. NAB, ABC, Read Broadcasting System ("Read") and the NRBA all referenced the need to plan for the impending drop-in of several new full service FM stations contemplated by our actions in BC Docket 80-90. The commenters generally suggested that no LPFM assignments could be made before the completion of this proceeding to provide adequate interference protection to the full service broadcasters.

17. Family Stations, Inc. ("Family") submitted late-filed comments in support of both translator access to additional input feeds and a uniform 10 watt power limit. It did not support Moody's origination proposal reasoning that there was no compelling public interest need for small originating stations. In addition, it stated that origination potential was likely to encourage the submission of more applications which would

[8] Section 74.1232(d) prevents licensees of FM broadcast stations from establishing translators outside their service area. Specifically, it prohibits any licensee of a FM broadcast station, or any applicant that has received support from such a licensee, from being authorized to operate a commercial translator outside the 1 mV/m contour of the primary station and within the 1 mV/m contour of another commercial station assigned to a different community.

[9] Mr. Read's petition was accepted as a comment on the Moody petition.

compound the processing problems without an offsetting benefit potential. The 85 informal comments received from radio listeners across the nation were unanimously in favor of expanded authority for translators. Most of the comments were specifically interested in receiving Moody's religious programming by way of satellite and microwave feeds to translators.

18. Moody's reply to the Family comments agreed that its position on origination had some merit. Moody accordingly amended its proposal to propose that origination be limited to 90 minutes weekly rather than unlimited as initially proposed. This limit on origination would not stimulate a flood of applications, it reasoned, yet it would still provide for some local programming. Moody's second reply comment maintained that the low power of FM translator stations is one reason why they will not be able to compete with full service stations. It again stated that it felt that the majority of the new FM translator stations would be located in rural areas. Finally, it suggested that full service stations could establish translators at their 1 mV/m "contour fringe" to "bolster their economic position."

19. NCCB and Moody responded to those commenters fearful of excessive competition if the FM translator rules were modified. NCCB stated that " . . . enhanced competition is healthy for the radio marketplace, beneficial to the public, and a necessary prerequisite to any further consideration of deregulation of broadcasting." The translator service, it stated, should not be used to further concentrate control of the industry as would occur if the suggestions of the NAB, ABC, and Read were followed and only the ownership rules in Section 74.1232 were modified. Instead, it argued " . . . that [low power FM translators] should be used as a means of opening up media access to 'historically under represented groups' and should be implemented in an expeditious and even-handed manner." ABC's reply comments stated that no significant increase in local service would be likely to result from FM translator stations. It agreed with NAB's view that the restricted service contours and budgets of FM translator stations were unlikely to generate production of original local programming.

*Discussion and Analysis*

20. The Commission recognizes the benefits that could flow from Moody's suggested rule changes, but we do not believe that this is the proper time to undertake the significant expansion of the FM service which would likely result from that proposal. We note, for example that the number of FM translator applications filed in recent months has dramatically increased, and it appears that many of the applicants are anticipating the establishment of a new FM low power service similar to the low power TV service. Some parties have filed a large number of

applications for many locations in population centers that, if granted, would virtually preclude other applicants. Moreover, informal inquiries indicate that, in addition to educational and religious organizations, real estate firms, aspiring disk jockeys and entertainers, political and public interest organizations, operators of stadia and auditoria, athletic organizations, amusement parks, golf courses, ski and other resort operators, summer camps, outdoor theater operators, and numerous other commercial enterprises would also be interested in operating their own low power radio stations.

21. Thus, it is clear that institution of a LPFM service would be greeted by the same application interest as LPTV, and similar processes would have to be developed to handle the staggering application flow.[10] Assuming that the necessary automated engineering standards could be developed, the Commission would require substantial increases in staff and equipment to handle the demand and resolve mutual exclusivities. Even assuming that these impediments could be overcome, this does not appear to be the proper time to open an inquiry that could result in substantial increases in the number of secondary stations occupying the FM band.

22. The Commission has recently amended its FM technical rules to permit additional classes of stations and permit Class A stations to operate in channels that had been reserved for Class B and C use.[11] As a result of those rule changes and in an effort to control the workload, the Commission adopted a *Notice of Proposed Rulemaking* in Docket 84-231, proposing 684 additions to the FM table of allotments.[12] That *Notice* also requested interested parties to submit counterproposals to the Commission's list. At this stage of the proceeding, it is impossible to predict the number of counterproposals that will be received and the number of channels that will ultimately be added under Docket 84-231. Moreover, upon conclusion of Docket 84-231, the Commission expects to receive numerous additional requests for new FM station allotments in compliance with the rules adopted in Docket 80-90. To propose new rules to permit the expanded growth in translator stations, even on a secondary basis, while attempting to complete the FM omnibus rulemaking would not only be counter-productive for us, but misleading for prospective translator operators. Although translators would be on notice of their secondary rights to a channel, once established, the Commission may have

[10] The list of potential users for such a low power radio service would be almost limitless. The RF Devices branch of the Commission's Office of Science and Technology and the Mass Media Bureau are continuously receiving inquiries from those expressing an interest in operating a limited range special purpose service in the broadcast bands because of the availability of low cost receivers.

[11] Docket 80-90, 48 F.R. 29486, June 27, 1983.

[12] 49 F.R. 11214, March 26, 1984.

difficulty in the forced removal of an established service. At this point, translator applicants would find it virtually impossible to accurately choose channels insulated from the impact of Dockets 80-90 and 83-231.

23. Moreover, the situation in FM is not directly analogous to TV, in which the Commission has authorized the use of microwave and satellite fed translators. Initially, we note that virtually the entire population of the United States receives off the air radio service, but TV service is much less extensive. Thus, strong policy considerations mitigated in favor of changes in the TV translator rules which permitted first microwave and satellite feeds and then low power television. These same considerations are not present in FM where virtually all of the United States receives some aural service. Furthermore, the TV video signal is amplitude modulated. Such signals are subject to noise interference to which FM is immune. Thus greater needs existed for a microwave means of feeding TV translators. Also most microwave systems are designed to operate with a constant amplitude output signal typical of FM operation. Linear amplification of an amplitude modulated video signal requires more complex equipment.

24. Recognizing that there may have been a number of impediments to Commission action on its proposal, Moody made several informal suggestions revising its proposal in ways designed to avoid perceived difficulties. As revised, the Moody proposal would permit microwave and satellite program sources only for FM translators operating in the noncommercial part of the FM band. Moreover, rebroadcast would be permitted only for the program of full service noncommercial educational FM stations, and extended local origination would not be permitted. Finally, there would be no change in the current translator power output limitations.

25. Even as amended, we do not believe it appropriate to commence a rulemaking proceeding on the Moody proposal. Indeed, some of the proponent's changes introduced further complications which mitigate against further action at this time. Permitting satellite or microwave fed FM translators to operate only in the noncommercial band will likely increase the interest in such stations. Although that increase is not expected to be as substantial as contemplated for a LPFM service, it will impact a part of the spectrum with significant existing problems.

26. The first 21 channels in the FM band are reserved for noncommercial use. However, we have found that stations operating on the lower channels of the reserved band have the potential to cause interference to the reception of TV Channel 6. There is also the possibility of interference to the reception of TV Channels 7 and 8, particularly in distant areas where TV booster amplifiers are frequently used. In Docket 20735, the Commission is looking into this interference problem and seeking means

to reduce the possibility of it occurring when additional noncommercial educational stations are authorized. One course of action under consideration may place limits on the location and power of stations using some of those channels. Because of their low power, FM translators must be located within the population center of the area to be served. This is also the area that is most susceptible to TV interference complaints. Accordingly, proceeding with a proposal to authorize additional stations in the noncommercial band is not appropriate until we have resolved these interference issues.

27. The selection of the noncommercial band would also complicate the Commission's engineering review of FM translator applications. Noncommercial FM stations are not allotted and licensed according to class and distance separations as are commercial stations. Therefore, a simple distance separation scheme for licensing translators cannot be used in the reserved educational band. An accurate calculation of each full service station's contour would be required to determine the actual protection contour, similar to the difficult calculation procedure used in processing LPTV applications. The Commission staff does not have sufficient information on FM antenna systems in the computer files to conduct this type of application processing. Thus, it is reasonable to expect that the increase in the complexity of the required engineering review would more than outweigh the limitation on the number of applications that could be expected.

28. FM translators in the noncommercial band would also impede the growth of full service stations in that band and effectively re-create the Class D stations. In Docket 20735, the Commission found that the large number of limited range 10 watt Class D stations that had been authorized were impeding licensing of more efficient Class B and C stations that would provide public radio programming to otherwise unserved areas. The *Report and Order*, released in 1978 terminated acceptance of new Class D applications and required existing Class D stations to either upgrade to Class A facilities (100 watts minimum) or move to a non-reserved commercial channel. Class D stations that chose to move to the commercial band no longer had primary status, but could only operate on a secondary non-interference basis. Many Class D stations requested that the Commission permit them to remain on their original noncommercial channel, with secondary status, but the Commission declined to do so. Although a number of the Class D stations elected to move to commercial channels, many others elected to increase their power, and remain in the noncommercial band, resulting in a number of currently pending mutually exclusive applications for power increases. Therefore, to now propose to amend the rules in a manner that would

encourage translator or low power operation in that band would be completely counter-productive.

29. The Moody proposal also bears on another Commission rule making proceeding which warrants consideration at this time. In 1974, the Commission was concerned with an emerging pattern of use of FM translators to extend the service areas of existing FM stations rather than to fill in areas of inadequate direct reception. In the *Notice of Proposed Rulemaking* in Docket 19918, the Commission proposed rules that would prohibit competitive expansion of an FM station's service area through translators where the area to be served was already within the primary service area of two other radio stations.[13] The Commission also proposed a rule which provided for the termination of translator operation upon sixty days notice. The sixty day rule was adopted in the *First Report and Order* in that Docket.[14] In 1978, the Commission issued a *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in Docket 19918.[15] The Commission therein determined that the two signal limitation was not an appropriate tool for the control of the use of translators for competitive expansion. Rather, the Commission proposed to prohibit the participation of the primary station in the operation of any translators outside their primary area. Upon review of the record accumulated as a result of the *Further Notice*, we find that there has been no additional information brought forth establishing that the present limitations on FM station licensee operation or control of translator stations are inadequate. Accordingly, it appears that no further action is warranted at this time and the Commission takes this opportunity to terminate Docket 19918 without amending the rules.

30. We do not believe that the decision herein is inconsistent with the new Section 7 of the Communications Act.[16] Congress therein declared that it shall be the policy of the United States to encourage the institution of new technologies and services and "[c]onsistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons." Initially, the service proposed by Moody would not be a "new" service within the meaning of the law. Rather, the service would be an extension of an existing service utilizing existing technology. The proposed changes would merely make a large number of additional stations feasible. Moreover, the proposal is, at this time, inconsistent with sound spectrum management. As indicated above, the Commission is engaged in the study of major changes in the

[13] 39 Fed. Reg. 1967, 44 FCC 2d 784.

[14] 43 F.R. 14660, published April 7, 1978.

[15] 43 F.R. 14695, published April 7, 1978.

[16] Federal Communications Commission Authorization Act of 1983, Public Law 98-214.

allotment of FM stations. Sound spectrum management requires that we resolve those proceeding before undertaking extension of the existing FM translator service.

31. While we must conclude that it is untimely to initiate action on these proposals now, we are not concluding that these ideas will not prove desirable in the future. Three specific ongoing efforts must be completed before the Commission or perspective applicants would be able to ascertain with any degree of accuracy where or how many new FM translator stations can be accommodated. First, the three year period during which existing less-than-maximum facility Class C stations can be upgraded must pass so that the configuration of those existing stations will become final. Second, our ongoing proceeding to define future protection criteria between television Channel 6 and the FM radio service must be completed so that minimum TV Channel 6 - FM coordination distances can be specified. Third, we must complete the ongoing Omnibus allotment proceeding in Docket 84-231 examining hundreds of new station allotments being created as a result of BC Docket 80-90. Once these three proceedings are completed, the full service station picture will have cleared enough to make a reasoned evaluation of the desirability of expanded FM translator operation. We invite the petitioners to resubmit at that time.

32. For the reasons stated above, IT IS ORDERED, that the Petition for Rulemaking RM-3914, filed by the Moody Bible Institute IS DENIED.

33. IT IS FURTHER ORDERED, for the reasons stated above, The Rulemaking Proceeding in Docket No. 19918 is hereby TERMINATED.

34. IT IS FURTHER ORDERED, that the Secretary shall cause this *Memorandum Opinion and Order* to be published in the FCC Reports.

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*